

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Miguel Humberto Medina Romero,)	
)	
Petitioner,)	ORDER ADOPTING
)	REPORT AND RECOMMENDATION
vs.)	
)	
Colby Braun, Warden, NDSP)	
)	Case No. 1:15-cv-47
Respondent.)	

The Petitioner, Miguel Humberto Medina Romero, filed a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody on April 30, 2015. See Docket No. 2. Romero sets forth two claims of ineffective assistance of counsel in relation to defense counsel's handling of the trial. See Docket No. 2. On June 29, 2015, the Respondent filed a motion to dismiss the petition. See Docket No. 8.

Magistrate Judge Charles S. Miller, Jr. reviewed the petition and the motion to dismiss and issued a Report and Recommendation on September 8, 2015. See Docket No. 15. Judge Miller recommended Romero's petition be dismissed. Specifically, Judge Miller found Romero's first claim of ineffective assistance relating to the alleged failure to call witnesses failed because it was unsupported by any signed statements or affidavits, and no prejudice was shown. Judge Miller found the second claim relating to defense counsel's alleged failure to explain voir dire and the jury selection process failed because it was unsupported by any evidence of deficient performance in the jury selection process, and the claimed prejudice was based entirely on speculation.

The parties were given fourteen (14) days to file objections to the Report and Recommendation. At Romero's request, the time to file objections was extended twenty (20) days. No objections were filed.

The Court has carefully reviewed the entire record and the relevant law and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 15) in its entirety, and **ORDERS** the following:

- 1) The Court **GRANTS** the Respondent's Motion to Dismiss (Docket No. 8) and **DENIES WITH PREJUDICE** Romero's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Docket No. 2).
- 2) The Court certifies that an appeal from the denial of this petition may not be taken in forma pauperis because such a appeal would be frivolous and cannot be taken in good faith.
- 3) The Court finds dismissal of the petition is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). If the Petitioner desires further review of his motion he may request issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals.

IT IS SO ORDERED.

Dated this 5th day of November, 2015.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court